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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

PAUL D. RYMALOWICZ,

Defendant and Appellant.

F071980

(Super. Ct. No. 09CM2650)

OPINION

THE COURT*

APPEAL from an order of the Superior Court of Kings County. Steven D. Barnes,
Judge.

Tara K. Hoveland, under appointment by the Court of Appeal, for Defendant and
Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and
Respondent.

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* Before Gomes, Acting P.J., Kane, J. and Smith, J.

Appointed counsel for defendant Paul D. Rymalowicz asked this court to review the record to determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Counsel filed an opening brief that sets forth the facts of the case. Defendant was advised of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. He responded with a letter, contending the trial court erred in denying his motion to reduce his restitution fine. Finding no arguable error that would result in a disposition more favorable to defendant, we affirm the order.

We provide the following brief description of the facts and procedural history of the case. (See *People v. Kelly* (2006) 40 Cal.4th 106, 110, 124.)

On May 18, 2015, acting in propria persona, defendant filed a motion to reduce his \$6,400 restitution fine, imposed some five years earlier in 2010, to \$200. He asserted the trial court should have conducted a hearing to determine his ability to pay the \$6,400 fine.

On May 21, 2015, the trial court denied defendant's motion to reduce the restitution fine, concluding it lacked jurisdiction to modify his sentence.

On July 10, 2015, defendant filed a notice of appeal.

DISCUSSION

“ ‘[G]enerally a trial court lacks jurisdiction to resentence a criminal defendant after execution of sentence has begun. [Citation.]’ (*People v. Howard* (1997) 16 Cal.4th 1081, 1089; see *People v. Karaman* (1992) 4 Cal.4th 335, 344, 347, 350 [court retains power to modify a sentence ‘at any time prior to execution of the sentence’]; *Dix v. Superior Court* (1991) 53 Cal.3d 442, 455); *Portillo v. Superior Court* (1992) 10 Cal.App.4th 1829, 1834-1835.)” (*People v. Turrin* (2009) 176 Cal.App.4th 1200, 1204.) “A defendant may not contest the amount, specificity, or propriety of an authorized order of a restitution fine for the first time on appeal [citations] let alone in a motion to modify the same in the trial court after it has lost jurisdiction. Defendant is contesting the amount and propriety of an authorized order of a restitution fine. [Penal Code]

Section 1202.4, subdivision (b), authorized the amounts imposed here. And defendant's motion raised a factual question about his ability to pay, not a pure question of law. The unauthorized-sentence exception to loss of jurisdiction does not apply here." (*Id.* at p. 1207.)

Similarly, in this case, the trial court properly concluded it had lost jurisdiction and was required to deny defendant's motion. Furthermore, we see no other arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The trial court's order denying defendant's motion for reduction of his restitution fine is affirmed.